

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC., PLATINUM)
MOTORS, INC., and MATTINGLY AUTO)
SALES, INC., individually and on behalf of)
other members of the general public similarly)
situated,)

Plaintiffs,)

v.)

NEXTGEAR CAPITAL, INC. f/k/a DEALER)
SERVICES CORPORATION,)

Defendant.)

Case No. 1:14-cv-01589-TWP-DLP

MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

Plaintiffs Red Barn Motors, Inc. (“Red Barn”), Platinum Motors, Inc. (“Platinum Motors”), and Mattingly Auto Sales, Inc. (“Mattingly Auto”), on behalf of a certified class of 17,208 used car dealerships¹ (collectively, “Plaintiffs”) respectfully move this Court pursuant to Fed. R. Civ. P. 23 for an Order: (1) granting preliminary approval (“Preliminary Approval Order”) of a proposed settlement agreement (“Settlement,” or the “Settlement Agreement”) with Defendant NextGear Capital, Inc., formerly known as Dealer Services Corporation, (“NextGear”); (2) preliminarily appointing Donlin Recano & Company, Inc. (“Donlin Recano”) as settlement administrator (“Settlement Administrator”); (3) directing notice to all class members who would be bound by the Settlement Agreement; (4) preliminarily approving the terms of the Settlement as likely approvable under Fed. R. Civ. P. 23(e)(1)(B); (5) approving the Notice Plan set forth hereinbelow and approving the form and content of the proposed Class Settlement Notice and the Class Action Fairness Act (“CAFA”) Notice (“CAFA Notice”); (6) staying all proceedings in the

¹ See (Filing No. 220). See also (Filing No. 315, at 9-19).

litigation unrelated to the Settlement pending final approval of the Settlement (“Final Approval,” evidenced by the “Final Approval Order”); (7) staying and/or enjoining, pending Final Approval of the Settlement, any actions brought by Class Members concerning a claim that is released under the Settlement Agreement; (8) authorizing the pre-payment of \$50,000 of the estimated Settlement Administrator’s costs within ten (10) days of the Preliminary Approval Order and granting a request by the Parties to authorize the Settlement Administrator to perform a search for those names and addresses from whom class notice was returned between April 2020 and June 2020; and (9) scheduling a Final Approval hearing for a time and date convenient for the Court that is not less than 90 days after service of the last CAFA Notice, at which hearing the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith and should be finally approved, and determine whether to approve Class Counsel’s application for attorneys’ fees, costs, and expenses (“Final Approval Hearing”).

After seven years of litigation, including extensive discovery, class certification and then decertification, a trip to the U.S. Court of Appeals for the Seventh Circuit vacating the decertification order, an all-day mediation, and months of back and forth negotiation between counsel, Plaintiffs and NextGear have reached agreement on a \$6.75 million common fund settlement and have executed a formal Settlement Agreement. The Settlement breaks down into: \$4.25 million cash, to be used for pro-rata cash payments to Class Members that do not have a negative account balance with NextGear, and payment of the class’s legal fees, costs, and settlement administrative costs, and \$2.5 million in pro-rata account credits to those class members with a negative account balance with NextGear. Certain class members will receive both cash and credits. No cash portion of the Settlement will revert to NextGear. The Settlement Agreement specifies that the three class representatives will also each receive a \$7,500.00 service award for serving as class

representatives. Other than required W-9 tax documents for those Class Members receiving cash payments of more than \$600.00, the Settlement Agreement requires no claims process; Class Members entitled to a cash payment will receive a check in the mail, and NextGear will automatically credit those Class Members receiving credit. No class member is required to conduct any further business with NextGear to receive funds or credits under the Settlement Agreement.

WHEREFORE, for the reasons set forth in the attached Memorandum in Support of Motion for Preliminary Approval of Settlement, the Declarations and Exhibits attached thereto, the Court likely will be able to conclude that the Settlement Agreement is “fair, reasonable, and adequate.” *See* Fed. R. Civ. P. 23(e)(2). Accordingly, the Plaintiffs request that the Court grant the preliminary approvals requested and approve the proposed class settlement notice.

Respectfully submitted, this 2nd day of June, 2021.

s/James M. Garner

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